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ABSTRACT

This feature issue focuses on the Americans with Disabilities Act (ADA), with articles discussing provisions of the ADA and its impact on people with developmental disabilities. Articles have the following titles and authors: "The ADA: What Does It Mean for People with Developmental Disabilities?" (Deborah L. McFadden and Edward P. Burke); "The ADA: Thoughts on Its Place in History" (Elizabeth M. Boggs); "The Battle Half Won" (Rick Berkobien); "The ADA and Employment: Does It Go Far Enough?" (Robin A. Jones); "Reasonable Accommodation in the Workplace" (Susanne M. Bruyere and Connie Ferrell); "Accommodation is Key to ADA Implementation" (Rachel Wobschall); "Title II: Accessible Programs and Services" (Deborah Leuchovius); "Transportation: New Rights, New Challenges" (Kurt Strom); "Customer Service: One City's Vision of Inclusion" (Lorinda Pearson and others); "Title III: Full Inclusion in Public Accommodations" (Charlie Lakin); "Access Goes Beyond Bricks and Mortar" (Robin A. Jones); "Designing for All: Beyond the ADA to Universal Design" (Harold Dean Kiewel); and "Claiming the Promise: Parents and the ADA" (Patricia McGill Smith and Anne M. Lauritzen). A list of nine organizations and nine publications concludes the bulletin. (JDD)

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Feature Issue on the ADA

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Feature Issue on the ADA **Volume 5 (4) Winter 1992-93**

The ADA promises all persons with disabilities access to opportunities and supports like those available to Stephanie Evelo. Pictured here at her workplace, she also attends technical college and is working toward supported independent living.

The ADA: What Does it Mean for People with Developmental Disabilities?

by Deborah L. McFadden and Edward P. Burke

"With today's signing of the landmark Americans with Disabilities Act, every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence and freedom." **- President George Bush**

As we stood on the south lawn of the White House and heard the President speak these words over two years ago, we felt that a new era of opportunity and hope had dawned for people with developmental disabilities all across America. The struggle to pass the Americans with Disabilities Act (ADA) had been a long one. Strong coalitions of disabilities rights groups had been forged after decades of individual self-interest. Wary business leaders and lobbyists had been educated and negotiated with, something we in the disability rights movement were not accustomed to doing. Members of the Congress had been convinced that the passage of the ADA would be good for all Americans, not only the minority of Americans with disabilities. The challenges had been great. And, standing amidst thousands of fellow advocates as the President signed the ADA, the taste of victory was sweet: people with disabilities would now have full access to the American Dream.

Almost immediately after this historic signature ceremony at the White House, we began to hear that some disability advocates

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From the Editors

What does the Americans with Disabilities Act mean for persons with developmental disabilities? That is the question addressed in this issue of IMPACT. As an introduction we share the following thoughts of one individual whom ADA was designed to benefit - **Tia Nelis,** Coordinator of the Self-Advocacy Support Project, University of Illinois (Chicago): "I am a member of a self-advocacy group. I strongly believe that learning how to become an empowered individual as well as actually becoming an empowered person is very important. It was very exciting to have the ADA passed, but I feel that we have a lot more work to do. There are many things that the ADA does not cover and people still need help to understand their rights in order to have the same opportunities as everyone else. I believe that the ADA is a good tool and is available to help people. Individuals with disabilities need to learn more about it so that they can use it to work with professionals and others that do not know what it is about. Others need to learn more about people with disabilities and that it is important to listen to what people need and want. People with disabilities need to become empowered so that they can have a voice in the community where they live. I encourage everyone to learn as much as they can about the ADA and to tell people about it. Working together is the only way that we will realize the rights that the ADA gives us."

It is in pursuit of the goals articulated by Ms. Nelis that this issue of IMPACT was developed.

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A publication of the Research and Training Center on Residential Services and Community Living and the Institute on Community Integration (UAP), College of Education, University of Minnesota. Dedicated to improving community services and social supports for persons with disabilities and their families.

The ADA: Thoughts on its Place in History

by Elizabeth M. Boggs

Most lasting peaceful change is brought about incrementally. Where the vehicle of change is legislation or litigation, we build on precedents, correcting the most critical imperfections and inequities in prior law. Occasionally we experience a quantum leap, a conceptual innovation. In the case of the Americans with Disabilities Act (ADA, P.L. 101-336) very significant advances have been made in several dimensions. Not all of them have been fully explored, even by those who supported their enactment.

The legal precedents of the ADA that were most often cited during 1988-1990 discussions of the Act were the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. Despite the frequent conversational coupling of these two pieces of legislation, the Constitutional assumptions on which they are based are very different. Section 504 stands on the premise that Congress may establish contingencies of its own devising when offering grants or contracts to non-federal entities. The usefulness of Section 504 in the discussions preceding the passage of the ADA was primarily practical; it served as a pilot project for demonstrating the feasibility and cost effectiveness of the various kinds of accommodations being called for in the ADA, especially in the workplace. Section 504 did not, however, vest any general rights in people with disabilities because it applied only to entities that chose to receive federal funds. The Civil Rights Act of 1964, on the other hand, constituted a mainstream advance in the development of the Constitutional principle of "equal protection." The ADA, in turn, made another major leap forward by establishing new affirmative rights.

Although the word "rights" has been used many millions of times in the past four years by people with disabilities and their advocates, few of us have thought much about the differences among rights. Some legal scholars make a distinction, for example, between "claim rights" and "liberties." "Claim rights," in turn, can be positive or negative. A positive claim right creates not only a "rights holder" (the claimant) but a "duty bearer", who is required to do something for the holder. For example, a citizen has a positive claim right to police protection; a minor child has a claim right to be supported by a parent. A negative claim right simply asserts the holder's right not to be imposed on or interfered with when acting on his or her own behalf in a way that does not impinge on the rights of others. The right to privacy in this context is a negative claim right. A "liberty" is the right not to be a "duty bearer," to be free of claims (of a specified kind) by others. For example, a parent is free of any legal duty to support an adult son or daughter.

The concept of negative and positive claim rights is relevant to an understanding of the ADA because historically the evolution of particular rights has generally moved from no rights to negative rights to positive rights, and from narrower to broader interpretations of each, in a sequence that may take several centuries. For example, "the right to counsel" in criminal cases has evolved from British common law where originally there was no such right, to the early days of the republic when the right existed as a negative claim right guaranteed by some state constitutions and, in federal courts, by the Sixth Amendment. In practice, this right could be exercised only by those who were able to pay the attorney's fee. It became a positive claim right (nationally) with respect to indigent defendants accused of capital offenses in 1932 through a Supreme Court decision (Powell v. Alabama) and was further broadened in 1964 in Gideon vs. Wainwright. Gideon gave to all indigent defendants who may be at risk of imprisonment a right to counsel provided at public expense. This set a precedent for affirmative accommodation to individual inequality, in Gideon's case an inequality of resources.

Powell, however, is of even greater relevance to the ADA. In the decision, Justice Sutherland opined that the court has a duty to assign counsel "in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeblemindedness, illiteracy or the like." This may be a first explicit reference to affirmative accommodation to disability (in this case mental retardation) as an essential of due process. Half a century later, the United States Department of Justice issued detailed regulations requiring that qualified interpreters for the deaf be made available without charge to any deaf person involved in any stage of any judicial or formal administrative proceedings (Federal Register, June 3, 1980, pp. 37629-31). Against this background, by its breadth and scope, the ADA has established the current high water mark of a process that has been going on in this country for more than two centuries.

How did we get here? The ADA is part and parcel of a much larger complex of social movements that have been waxing and waning in America and worldwide over several centuries. What is now seen as the "civil rights movement" in the United States encompasses protections against discrimination based on race, creed, sex, national origin, age, and sexual orientation. The classes of people so identified are sometimes cited by lawyers as "suspect classes " who, by virtue of the history of past discrimination or abuses against them, require the protection of special judicial vigilance. Basically the right not to be discriminated against is a negative claim right. Civil rights laws do,

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The Battle Half Won

by Rick Berkobien

Passage of the Americans with Disabilities Act (ADA) was a triumph for *all* individuals with disabilities. But for many (if not all) people with mental retardation and other *cognitive* disabilities, passage of the law has, to date, only been a partial victory. A cognitive disability can affect a person's memory, language, judgement, learning, and related areas. Cognitive disabilities include mental retardation, traumatic brain injury, Alzheimer's disease, specific learning disabilities, mental illness, and similar limiting conditions. While the ADA is clearly intended to protect the rights of millions of people with cognitive disabilities, as well as individuals with physical disabilities, most efforts to gain implementation of the ADA are being presented and understood with reference to physical disabilities.

Educating our nation to comply with the ADA is a challenge that affects all people with disabilities, but gaining recognition and accommodations for individuals with cognitive disabilities involves additional challenges. The Arc (formerly Association for Retarded Citizens of the United States) and other advocates are becoming aware that our nation has a limited view of accessibility. Many businesses consider accessibility to be ramps or widened doorways. To many employers, accommodations are communication aids for the worker who is deaf or alternate format materials for the employee who is blind. But as important as these accommodations are, they fall short when it comes to accommodating the individual whose disability primarily affects reading ability, language, judgement or memory.

If the protections of the ADA are to be realized for all people with disabilities, it is imperative that organizations and advocates work together to promote recognition that the law covers *all* individuals with disabilities, including those with cognitive disabilities. Below are several areas in which organizations and advocates can educate others to promote inclusion of people with cognitive disabilities under the law:

- **Advocate for resources to educate about cognitive disability**. Advocates should work together to make federal, state, and local agencies aware that employers, businesses, and other entities must address accessibility issues and accommodations specific to individuals with cognitive disabilities. Government agencies should earmark funds for increased information dissemination and technical assistance on the ADA, with specific emphasis on increasing awareness of compliance in the area of cognitive disability.
- **Provide information and assistance**. As many businesses and employers seek help to comply with the ADA, advocates can educate the community about cognitive disability and appropriate accommodations. Advocates should reach out to local Chambers of Commerce, trade groups, service organizations, and others.
- **Promote non-traditional employment**. People with cognitive disabilities have traditionally been underemployed and relegated to low-paying, less-regarded jobs. As employers comply with Title I and provide employment opportunities to people with disabilities, a glass ceiling may prevent people with cognitive disabilities from advancing to better paying, more challenging jobs. Advocates can make employers aware that all individuals with disabilities, including those with cognitive disabilities, have skills and abilities that make them eligible for various levels of employment. Employers must look at the abilities of each individual.
- **Educate primary consumers**. The ADA is a complex and potentially difficult law that many people with cognitive disabilities may have difficulty understanding. Organizations should provide education and support to individuals with cognitive disabilities so that they can actively advocate for themselves and advance recognition of their own rights under the law.
- **Expand accommodations for individuals with cognitive disabilities**. The service delivery system for people with cognitive disabilities has traditionally been a model emphasizing training to prepare individuals for community living and employment. In essence, people with cognitive disabilities are often expected to accommodate themselves to the community instead of the community providing accommodations to meet this specific disability. While wheelchair ramps, accessible restrooms, and Braille signs meet many of the needs of individuals with various disabilities, there continues to be a lack of functional accommodations to address impairments in learning, language, memory, judgement and other domains specific to individuals with cognitive disabilities. Organizations and advocates must press for the development and use of accommodations that enable businesses and employers to provide equal access to persons with cognitive disabilities.

The above recommendations are only an abbreviated list of actions to make the protections of the ADA a reality for *all* people with disabilities. Advocacy groups, consumers, researchers, and government agencies must now act and expand upon these recommendations to ensure that the ADA is fully implemented for people with cognitive disabilities.

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The ADA and Employment: Does It Go Far Enough?

by Robin A. Jones

Employment is an essential component of American life. Webster's dictionary defines it as the act of performing a job for a salary or wages. Society measures the success of individuals by the type of employment they are engaged in. The majority of people want to have jobs that they enj y and which will bring them the benefits of a self-sufficient lifestyle. People with disabilities want these same things, but have not historically had the same opportunities to attain them. Access to the workplace has been difficult to achieve due to a fear of hiring people with disabilities that stems from myths and stereotypes regarding individual abilities. Does the Americans with Disabilities Act (ADA) go far enough in addressing this situation? Will people with disabilities finally achieve the ultimate goal of full employment? The jury is still out.

With the enactment of the ADA, Congress mandated a prohibition against discrimination in employment on the basis of disability. The discrimination prohibition encompasses all aspects of employment including the application and recruitment process, hiring and firing, promotions, and participation in the benefits and privileges of the job. Private employers, state and local governments, employment agencies, labor unions, and joint labor-management communities are covered by this statute. Covered employers are those who have 25 or more employees (1992) or 15 or more employees (1994), including part-time employees, working for them for 20 or more calendar weeks in the current or preceding calendar year. The definition of "employer" includes persons who are "agents" of the employer, such as managers, supervisors, and forepersons, or others who act for the employer, such as agencies that conduct background checks on candidates.

Protection under the employment provisions of the ADA is available to "qualified persons with a disability" who meet the skill, experience, education, and other job-related requirements of a position, and who, with or without reasonable accommodation, can perform the essential functions of a job. "Individual with a disability" is defined as someone who: 1) has a physical or mental impairment that substantially limits one or more of his/her major life activities; 2) has a record of such an impairment; or 3) is regarded as having such an impairment. A physical impairment is defined by the ADA as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems. The ADA defines a mental impairment as any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities. A person's impairment is determined without regard to any medication or assistive device that he/she may use. Major life activities are considered to be those that an average person can perform with little or no difficulty. Examples include but are not limited to walking, speaking, breathing, seeing, hearing, caring for oneself, and working.

The ADA provides protection against discrimination to individuals who have a history of disability. Employers are prohibited from discriminating against a person based on information from an individual's past as it relates to any history of an impairment or treatment for an impairment. In many situations individuals may have had illnesses which are either cured or in remission. This may include individuals who have a history of cancer, heart disease, drug and alcohol abuse, or mental illness. This portion of the law also provides protection to individuals who may have been misclassified (e.g., a person with a communication impairment misclassified as having a cognitive impairment) when that misclassification may affect employment.

Discrimination based on the perception of a disability is prohibited by the ADA. The legislative history indicates that Congress intended this part of the definition to protect people from a range of discriminatory actions based on "myths, fears and stereotypes" about disability, which occur even when a person does not have a substantially limiting impairment. This part of the definition protects against three potential situations that may occur in the workplace: 1) The individual may have an impairment that is not substantially limiting, but is treated by the employer as having a limiting impairment; 2)The individual has an impairment that is substantially limiting because of attitudes of others toward the condition; and 3) The individual may have no impairment at all, but is regarded by an employer as having a substantially limiting impairment based on stereotypes, fear, or misconceptions.

In order to determine whether or not an individual with a disability is qualified to do a job the employer must first identify the essential functions of a job. Essential functions are those that relate to why the position exists. For example, a business seeks to hire a receptionist because they need someone to answer the phone and greet customers. Essential functions may also be determined by examining the number of other employees who are available to perform the function or among whom the function can be distributed. For example, it may be essential for each of the support staff to be able to operate the switchboard in order to cover the other staff during lunch or breaks because there are only two support staff available in the office at any given time. Highly specialized functions will require employees who have a special expertise or ability to perform the function. For example, a business is expanding it's accounting department and needs an employee who has credentials as a CPA.

Job descriptions often contain information regarding the

functions assigned to the job. While the ADA does not require that employers utilize job descriptions, it does encourage those that do use them to review their job descriptions to assure that they reflect the actual functions of a job, and focus on the purpose of the function and the result to be accomplished rather than on the manner in which the function should be performed. For example, in a job requiring the use of a computer, the essential function may be the ability to access, input, and retrieve information from the computer; it may not be essential that a person enter information manually, or visually read the computer screen.

Key to the provisions prohibiting discrimination in employment is the need for employers to consider individuals to be qualified for a job if they are able to perform with or without a *reasonable accommodation*. Accommodation must be provided to ensure equal opportunity in the application process, to enable a qualified individual with a disability to perform the essential functions of a job, and to enable an employee with a disability to enjoy equal benefits and privileges of employment. There are five basic principles that apply to reasonable accommodations:

- A reasonable accommodation must be an effective accommodation and provide a person with a disability the opportunity to function at the same level of performance or to enjoy benefits or privileges equal to other employees.
- The reasonable accommodation obligation applies only to accommodations that reduce barriers to employment, not to those based solely on employee preferences.
- A reasonable accommodation need not be the best accommodation available, as long as it is effective for the purpose of providing equal opportunity or benefit.
- An employer is not required to provide an accommodation that is primarily for personal use. Equipment and devices that assist a person in performing activities of daily living on or off the job are considered personal items that an employer is not required to provide.
- The ADA's requirements for certain types of adjustment and modifications to meet the reasonable accommodation obligation do not prevent an employer from participating in supported employment programs that require modifications beyond those required under the ADA, such as the restructuring of essential job functions.

Employers are responsible under the ADA for providing a reasonable accommodation unless it imposes an undue hardship on the operation of its business. Undue hardship is defined as an action that is excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

The ADA does allow an additional consideration in screening, hiring, and retaining employees: A person may be excluded from a job if they can be shown to pose a *direct threat* in the workplace. The direct threat standard used by employers to eliminate any danger to the health or safety of the individual or others has been highly criticized by the disability community. The ADA requires that this standard be applied to all applicants for a particular job; the employer must show that there is a significant risk of substantial harm and that the specific risk be identified. In addition, it requires that the risk not be speculative or remote, and that it be based on objective medical or other evidence. In situations where there is a genuine significant risk an employer must consider whether or not the risk can be eliminated or reduced below the level of direct threat through a reasonable accommodation. Concern within the disability community is that employers will execute this standard consistently when dealing with individuals who have infectious diseases, mental illness, or seizure disorders regardless of the fact that the ADA requires employers to base their claims on current medical knowledge and other evidence rather than relying on generalized and frequently out-of-date assumptions about risks associated with certain disabilities.

The ADA touches upon all aspects of employment, yet many do not feel that the employment provisions of the law will result in substantial differences for individuals with certain disabilities. The authors of the law have been criticized for not including supported employment as a required form of reasonable accommodation. In addition, the agencies that are responsible for the enforcement of the ADA and the development of information regarding the ADA have failed to produce adequate technical assistance materials that can assist employers in understanding the needs of individuals with cognitive disabilities and their roles in the workplace. Much of the information that has been published regarding the ADA has focused upon physical disabilities. In addition, there has been a lack of response from the federal government to requests for information that can be read and understood by individuals with cognitive disabilities regarding their rights and responsibilities under the law.

The ADA provides a significant opportunity for individuals with disabilities to achieve the American dream of having a job and self-sufficient lifestyle. The realization of that dream is dependent upon the interplay between the agencies who enforce the ADA, individuals with disabilities, their families and friends, advocates, and the business community. Education is key to the success of the ADA. Congress can pass laws, but it cannot by itself change society. Society must acquire a new image of and attitude toward people with disabilities in the workplace and in the community. The ADA is a powerful tool that people with disabilities and their advocates must learn to use effectively on the path toward greater independence, productivity, and inclusion. The potential is there.

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Reasonable Accommodation in the Workplace

by Susanne M. Bruyere and Connie Ferrell

The critical concept in the employment provisions of the Americans with Disabilities Act of 1990 (ADA) is that of *reasonable accommodation*. Reasonable accommodation is any modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal employment opportunity. The employer's obligation to provide a reasonable accommodation applies to all aspects of employment. The duty is ongoing and may arise any time that a person's disability or job changes. An employer, according to the ADA, cannot deny an employment opportunity to a qualified applicant or employee because of the need to provide reasonable accommodation, but an employer does not have to make an accommodation for an individual who is not otherwise qualified for a position.

We will focus here on the concept of reasonable accommodation as it has meaning for employment opportunities for persons with developmental disabilities, particularly persons with limitations in cognitive abilities. Persons with developmental disabilities make up between one to three percent of the American population over the age of 20 (depending on the estimate used); this represents a potential workforce of approximately 1.5 to 5.0 million people. Even using the smaller of the estimates, currently employment opportunities are available to fewer than 10%. The ADA has implications for these individuals in getting jobs, effectively performing once there, and progressing.

Most persons with developmental disabilities need help in the job identification, interview, and application processes. The ADA does not directly address all these needs; therefore, it is important that efforts to assist persons with developmental disabilities in using the ADA begin by helping them explore their employment interests and aptitudes. Most also need help with the application and interview processes, including assistance in completing application forms and interpreting application questions. Providing the interviewer with recommendations about speaking clearly and simply about job requirements may also be helpful.

Sometimes people with developmental disabilities have directly relevant work experience, but often they are looking for a first opportunity to gain this experience. In that case, the reasonable accommodation may be added assistance in learning the job. Such an accommodation could mean that the employer or supervisor spends additional time in training the new employee; breaking tasks down into smaller, more clearly defined tasks; and using very clear and simple language. Employers, especially ones without experience in working with employees who have developmental disabilities, may feel insecure about their abilities to identify such needed accommodations. Often the most important assistance the employer can receive is that which helps them think about the accommodations, assistance, and support needed by an individual, and what they can readily provide.

Persons with disabilities that impact their cognitive functioning may also greatly benefit from having a set routine and a consistent work sequence. Sometimes, allowing the employee to use a watch with auditory reminders, or using pictures or diagrams showing job sequence may be needed. Short-term assistance from experienced job "accommodators" often quickly imparts these strategies.

It is also helpful if the employer or supervisor takes time to orient the employee to company rules as presented in the basic orientation training or company handbook; being clear about the expected quantity and quality of work, and the method of performance appraisal should be a part of this discussion. Persons who provide natural supports (family members, friends) or paid supports (job coaches, case managers) should ensure that these are understood by the employee.

Another potential accommodation for a person with a developmental disability may be assistance in fitting in with other people in their work environment. Once in the job, the person with a developmental disability might need added assistance to be fully included in company social events and inservice training, and in being considered for job advancement and promotion opportunities. Just as the individual cannot be discriminated against in securing employment, neither can he/she be discriminated against in participation in the culture of the workplace. Studies have indicated that full participation in the social setting of the workplace is often the most difficult challenge for workers with developmental disabilities. Employers and persons providing natural and paid supports must recognize and be prepared to provide the supports needed for social as well as economic inclusion.

It is important to emphasize that the ADA encourages a reasonable accommodation process that is informal and interactive, involving the employer, the person with the disability, and his/her personal advocates jointly exploring the best accommodations to support the individual. Having the person with a disability at the center of the discussion better assures that the appropriate accommodations will be identified, and that the employer establishes a relationship with the individual that affirms the individual's value and dignity.

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Accommodation is Key to ADA Implementation

by Rachel Wobschall

Recently, the Americans with Disabilities Act (ADA) took another step toward empowering people with disabilities. Not only does the ADA prohibit discrimination against people with disabilities, it requires changes in the environment to give people with disabilities the freedom to participate fully in work and public settings. Divided into four major areas, the ADA addresses: Employment (Title I), Public Services (Title II), Public Accommodations and Commercial Facilities (Title III), and Telecommunications (Title IV). Through the ADA, worksites and public places will be designed to accommodate people with disabilities.

In the area of employment, employers have the responsibility to make *reasonable accommodations* for qualified persons with disabilities. Reasonable accommodation means modifications or adjustments to job application procedures, to the work environment or manner of performance, or other changes to facilitate enjoyment of equal benefits and privileges of employment. Examples include:

- **Removal of structural barriers from the work environment**, including common areas such as lounges and cafeterias. For example, using levers in place of knobs, and Braille or raised numbers on elevator control panels.
- **Job restructuring**. For example, reassigning nonessential job functions and redesigning procedures for performing certain functions.
- **Modified work schedules**. For example, allowing additional breaks or rest periods and flexible scheduling
- **Acquisition or modification of equipment or devices**. For example, providing keyboard guards for typewriters, software that synthesizes speech or enlarges print on computer screens, and phone headsets for hands-free telephone conversations.
- **Provision of qualified interpreters, readers or assistants.** For example, using communication in a form compatible with the individual's abilities.

As with worksites, public accommodations (e.g., public places and certain tests or courses) are required to make their services or goods available to people with disabilities. A goal of the ADA is for public accommodations to provide goods and services in the most integrated setting appropriate. Examples of how public accommodations can change discriminatory policies and procedures include:

- **Eligibility criteria**. For example, a video store cannot require that a customer have a driver's license in order to rent movies (some classes of people with disabilities cannot obtain driver's licenses), and a parking garage cannot refuse to allow vans (assuming adequate clearance).
- **Modification of policies, practices, and procedures.** For example, a department store policy of only one person in the dressing room must be modified to allow assistance.
- **Auxiliary aids and services.** For example, a college must make available qualified readers, note takers, and taped, Braille, or large print texts for students, and a theater must have assistive listening devices available.

There are limits to accommodation requirements under the ADA. In employment settings, accommodations may be limited if modifications would result in *undue hardship*. Specifically, undue hardship requires the employer to show that the modification would require significant difficulty or expense. The determination of an employer's particular undue hardship depends upon the employer's circumstances (i.e., size of business and budget). Limitations on modifying policies, practices, and procedures, and providing auxiliary aids and services in public places exist when the modification creates an undue burden or fundamental alteration. Considerations for determining an undue burden require a case-by-case analysis including factors such as nature and cost, financial resources of the site, and legitimate safety requirements. A fundamental alteration involves a modification causing the nature of the place, facility, goods, or services to significantly change.

Unfortunately, the cost of making accommodations can be a concern, especially when the modifications require substantial changes. Yet, according to an accommodations study by Berkeley Planning Associates for the U.S. Department of Labor, over 80% of worksite accommodations cost less than $500. Additionally, the federal government provides tax credits and deductions as an incentive to remove barriers and make accommodations. Other funding resources include governmental and private organizations and agencies.

The design of accommodations to integrate people with disabilities more fully in work and public settings enhances independence and opportunity. The accommodations listed above are examples of ways to make worksites and public places more usable by everyone. When in doubt about how to proceed with a specific accommodation, consult with the individual with a disability to determine his/her preference.

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Title II: Accessible Programs and Services

by Deborah Leuchovius

Title II of the Americans with Disabilities Act holds great promise for expanding opportunities for individuals with disabilities. Title II focuses specifically on the activities, services, and programs offered by state and local governments, but its impact is not narrow, for these state and local governments provide a broad range of services to our society. There are numerous examples of the kinds of services and activities that are affected by Title II. For instance, community education and extended-day child care programs operated by school districts for school-age children; recreation programs offered by park boards; city or state owned zoos; tours, exhibits and programs of municipal museums or state funded historical sites; television and videotape programming produced by public agencies; services provided by municipal hospitals; and 911 telephone emergency services, to name only a few.

To understand how Title II of the ADA can be used to foster more opportunities for individuals with developmental disabilities, it is helpful to know its relationship to the existing protections of Section 504 of the Rehabilitation Act of 1973, and to become familiar with several key components of Title II. Of special importance is the mandate to provide "program access," the mandate to make public services available in an integrated setting, and to provide "auxiliary aids and services" as needed by people with communication disabilities.

To those familiar with the protections contained in Section 504 of the Rehabilitation Act of 1973, much of Title II may sound familiar. However, there are also some important differences. In several ways the protections provided by Title II are stronger. One major difference between the two laws is that Section 504 only applies only to federal agencies and to those entities that receive federal money. Title II extends Section 504's key requirement for "program access" to the activities, services and programs of state and local governments regardless of whether they receive federal funds. This is significant because not all state and local government operations receive funds from the federal government. With the passage of the ADA people with disabilities have the legal right to participate in the many programs funded by federal, state or local taxes.

Title II inherits its key concept of "program access" from Section 504. This means that covered public agencies must ensure that their programs are accessible to people with disabilities. This does not necessarily mean, however, that all public buildings must be made accessible. If program access can be achieved by other means, public agencies are not required to remove existing architectural barriers. For instance, if a Saturday morning swimming class currently offered by a school district's community education program is held at an inaccessible site, the school district could move the class to an accessible school building with a pool rather than making architectural changes at the school where the program is currently being offered. Whichever alternative is chosen, however, the school district must find a way to provide access to its program to persons with disabilities.

Other ways of providing access to programs or services might be to provide an aide or personal assistant to enable an individual with a disability to participate in a program or to obtain a public service. For example, if a county general relief program provides emergency assistance to individuals who meet certain financial criteria, but their application process is too lengthy or complex for individuals with cognitive disabilities to successfully complete, the county has an obligation to ensure that otherwise eligible individuals with disabilities are not denied needed benefits. In such a case the county might provide applicants with an aide or assistant to help them complete the application.

Although Title II regulations make it clear that a public entity is not required to make each of its existing facilities accessible, Title II is not a weak standard of accessibility. It requires a public agency to make its programs accessible in all but the most unusual cases. The only exceptions are when providing access would result in a fundamental alteration in the nature of the program, or in undue financial and administrative burdens. The "undue burden" standard of Title II, however, is significantly higher than the "readily achievable" standard of Title III and should therefore provide individuals with disabilities access to the services, programs, and activities of public entities in most circumstances.

One extremely significant way that Title II differs from Section 504 is that Title II emphasizes access in an integrated setting. Integrating individuals with disabilities into the mainstream of society is what the Americans with Disabilities Act is all about. While separate programs are allowed if they are necessary to ensure equal opportunity, they should not be considered the standard method of providing services to individuals with disabilities. Even when separate programs are offered, an individual with a disability still has the right to choose to participate in the regular program. For example, a child with a developmental disability could not be denied the opportunity to participate in a neighborhood recreation program because the city offered other specially designed programs for children with developmental disabilities elsewhere. If an individual is qualified for the regular program (e.g., is in the appropriate age range), he or she cannot be excluded from that program simply because a special program is available. Whenever choosing between alternative methods of providing program access, guidelines state that priority must be given to the one that results in the

most integrated setting appropriate - in effect, making inclusive program options the norm.

Title II, like Title III of the ADA, requires the provision of auxiliary aids and services when necessary to ensure effective communication. This means providing qualified and impartial interpreters to individuals who are deaf or hard of hearing; providing readers, or materials in audiotape, Braille or large print formats to individuals who are blind or have low vision; and providing closed-captioned television or videotape programming for people who are deaf or hard of hearing. Public entities are again required to provide such services unless to do so would be an undue burden or fundamentally alter the nature of the service being offered. Title II also requires that 911 emergency services provide direct access to individuals with impaired speech or hearing who use a TDD.

It is also important for consumers to know that public entities may not place special charges on individuals with disabilities to cover the costs of accessibility measures or accommodations. The tuition or fees for all students or participants, however, may be adjusted to cover the costs of accommodations for persons with disabilities.

With implementation of these program access requirements and requirements to provide auxiliary aids and services to people with communication disabilities, we will gradually see the transformation of our public service system into one that is increasingly accessible to individuals with disabilities. Knowledge of the Title II and its key components can help individuals with disabilities and their advocates to speed this change.

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Transportation: New Rights, New Challenges

by Kurt Strom

Transportation is essential in modern American society. Without it, most people would find it difficult or impossible to attend school, to get to work, or to take advantage of recreational opportunities. Persons with developmental or other disabilities are no exception. Recognizing this fact, the authors of the Americans with Disabilities Act (ADA) included language to ensure that both public and private transportation systems, including buses and trains, will become accessible. Most persons with disabilities want to know how these transportation provisions will affect their community's regular route bus system or its paratransit (dial-a-ride) system. The rest of this article will try to answer that question.

To begin with, the ADA requires all new buses purchased or leased after August 25, 1990, to be accessible to persons with disabilities, including those who use wheelchairs. In most cases, existing buses need not be made accessible, but over time as these buses wear out they will have to be replaced with ones that are accessible. So, eventually a community's entire fleet of buses will become accessible to most people with disabilities.

However, some people with developmental or other disabilities will never be able to use the regular route system. Some may use special wheelchairs, for example, which cannot be readily accommodated in the regular route buses; others may have a cognitive impairment that prevents them from understanding how to make needed transfers between routes. Hopefully, the ADA access standards will challenge education and social service providers and families to teach persons with disabilities how to make maximum use of accessible regular transportation. But, the ADA also addresses the transportation needs of these individuals who for whatever reason cannot do so. It requires provision of paratransit service wherever there is a regular route system, unless the local transit authority can prove that doing so would create an undue financial burden. Paratransit systems are generally dial-a-ride programs, where the rider phones in an order for a specific trip and is picked up by a vehicle that comes to the house or other requested location.

The ADA requires paratransit service to be comparable to the regular route service with regard to the service area, response time, fares, and hours and days of service. This means it must be provided within a corridor three-fourths of a mile wide on each side of a regular route. (The local transit authority may choose to increase this corridor width to as much as one and one-half miles). Trip requests made for the following day must be honored, paratransit fares may not be more than twice the full fare that the regular route service charges for a trip of similar length, and paratransit service must be available during the same days and hours as regular route service. Furthermore, trip limitations cannot be imposed on the basis of trip purpose (e.g., a trip to the doctor cannot be given higher priority than to the hairdresser).

To assure that a paratransit system meets these requirements as well as others such as eligibility

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Customer Service: One City's Vision of Inclusion

by Lorinda Pearson, Barb Kempf, Judy Hansing, Cyndy Blomgren, Greg Brooker, and Mo Fairnestock

One positive way to view compliance with Title II of the Americans with Disabilities Act of 1990 (ADA) is through the Act's vision and spirit of customer service. Many cities are responding to this call for creating a welcoming, accessible community government through the idea of customer service. One such city is Bloomington, Minnesota, a city of 87,000 people and the third largest community in the state.

The city government of Bloomington is responding to the call of the ADA, which requires all state and local governments to evaluate all of their programs, services, and activities to ensure physical and programmatic accessibility to citizens with disabilities. Where barriers to accessibility are identified, the ADA requires accommodations be made upon the request of an individual with a disability. Making accommodations to assist citizens is part the City of Bloomington's philosophy of customer service. Therefore, it comes as no surprise that the spirit of the ADA works for Bloomington because, philosophically, its consumers have always come first.

> "The Americans with Disabilities Act has set our sights on removing the barriers that deny individuals with disabilities an equal opportunity to share in and contribute to the vitality of American life. The ADA means...full participation in, and access to, all aspects of society."
>
> - Department of Justice Technical Assistance Manual (Title II), pg. 231.

Bloomington, over the years, has put great emphasis on being responsive to the needs of citizens and in particular the needs of citizens with disabilities. Even before Section 504 of the Rehabilitation Act was passed in 1973, the city was promoting community access. Since the early 1970s the city has involved consumers with disabilities in the decision-making process through advisory boards and a task force to address access issues such as ensuring that the city's 34 parks and permanent shelters are structurally accessible. Today, additional improvements are being made in accordance with the ADA acce[illegible] guidelines.

Bloomington attributes most of its success to the active involvement of its consumers with disabilities. An example of this involvement is demonstrated by long time resident, Bob Peters. Over the years, Mr. Peters has worked to identify and help remove accessibility barriers in Bloomington by testifying at the state level for the implementation of a uniform standard for disabled parking signage, and by participating on a team to define accessibility standards at the Mall of America. In addition, he developed a statewide access guide titled, *Easy Wheeling In Minnesota*, to assist individuals with disabilities in getting around. He has likened the impact of the ADA for persons with disabilities to the civil rights legislation of years past.

Because of citizens like Bob Peters, Bloomington takes its role in being accessible very seriously. Prior to the ADA, the city's emphasis in achieving accessibility was on removing physical barriers, particularly at facilities providing services that consumers most often access, such as City Hall and the Creekside Community Center. With the use of federal dollars from the Community Development Block Grant program, Bloomington has been able to upgrade facilities by removing physical barriers. In addition, through its Architectural Barrier Removal program Bloomington has focused on staff training with the goals of creating a consumer friendly attitude, promoting consumer self-reliance, and reducing consumer dependency on staff.

The city continues to increase awareness of the needs of consumers with developmental disabilities, and is working toward ensuring that they have equal access to the programs, services, and activities offered by the city. When a consumer with a developmental disability or their advocate requests an accommodation to participate in or access a program, service, or activity, the city will work with the consumer to ensure that an accommodation is made. For example, if a consumer with a developmental disability asks for assistance in participating in an activity offered by the Parks and Recreation Division, the Adaptive Recreation Supervisor will meet with the individual and/or their advocate to determine the assistance needed. It might involve something as simple as assistance in completing a registration form or as complex as providing an additional staff person to assist the individual in the program. Some additional examples of physical and program accessibility improvements made over the years include: providing assistance in completing forms, reading materials to individuals who do not read, allowing additional time on employment tests when requested, signage to accommodate individuals with varying visual needs, installation of Telecommunications Devices for the Deaf (TDD) including 911 services, lift-equipped buses, assistive listening devices for meetings, integrated park and recreation programs, interpreters for individuals with hearing impairments, and volunteers to assist individuals with disabilities.

Although Bloomington was required, under Section 504 of the Rehabilitation Act, to provide access to city services

and facilities for citizens with disabilities, the ADA has provided the city with an additional opportunity to reevaluate and enhance its facilities, programs, services, and activities to ensure access. It has also given Bloomington the opportunity to embrace the inclusive "spirit of the law" by recognizing not only the needs of citizens with disabilities, but also the resources and talents that they bring to city government and the community.

To carry forward the inclusive spirit of the ADA, Bloomington uses a team approach involving participation of a liaison from each department and division in the city. The liaisons are the ADA contacts and resources for their departments. The liaisons meet monthly to discuss progress on ADA compliance and to collect and share resources. This approach has been particularly effective in creating a network of employees who can ensure that resources to achieve compliance are available throughout the city.

In developing its compliance process, Bloomington has focused primarily on the programs, services, and activities the city currently offers and how it ensures access to citizens with disabilities in these areas. To determine how the city currently serves the community, each department/division completed a self-evaluation of their respective programs, services, and activities that are made available to the public. The self-evaluations are then analyzed to determine specific areas where barriers to access exist. Upon identification of barriers to compliance, a transition plan is developed that details the barriers present and describes the modifications necessary to achieve access. It is not uncommon for Bloomington to choose modifications that exceed the ADA compliance requirements in order to achieve the greatest access possible. Throughout the process, consumer input, especially from persons with disabilities, and is solicited through advisory boards and task forces.

In addition to ensuring that the city's own facilities, programs, services, and activities meet or exceed the ADA compliance requirements, the city also works closely with local businesses and organizations to influence greater community access for all citizens with disabilities. Through its Architectural Barriers Removal grant program and the Building and Inspection Division, the city provides technical assistance regarding the ADA compliance requirements to individuals, local businesses and organizations. Bloomington has used this program to improve access to a variety of recreational facilities schools and local businesses, including the recently opened Mall of America.

The overall effect of the ADA on Bloomington is a renewed commitment to provide accessible programs, services, and activities to all of the city's citizens. The Americans with Disabilities Act will have a lasting positive impact not only on the city and its services, but also on the citizens with disabilities who live, work, and play in Bloomington, Minnesota.

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Information Sought for ADA Implementation Study

Suffolk University in Boston, together with the Shriver Center, Children's Hospital, and the World Institute on Disability, is seeking information on ADA implementation from organizations and individuals. The information is to be used in a three-year evaluation of ADA implementation funded by the National Institute on Disability and Rehabilitation Research.

The project has three major goals:

- To develop a legal analysis comparing existing anti-discrimination laws and regulations with the ADA.
- To develop a set of outcome measures with which to monitor implementation; to assess their relevance for persons with disabilities, and public and private officials; and to identify exemplary implementation practices.
- To delineate a future research agenda.

The project is seeking help in identifying positive examples of and problems associated with ADA implementation. Information is needed from organizations and individuals on the types of outcomes associated with ADA in all the major areas covered by the ADA (employment, public/private accommodation, transportation, and communication).

For further information contact Mary Ann Allard, The Shriver Center, 200 Trapelo Road, Waltham, MA 02254, (617) 642-0293 or (617) 642-0238 (FAX).

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Title III: Full Inclusion in Public Accommodations

by Charlie Lakin

Title III of the Americans with Disabilities Act (ADA) is primarily focused on ending discrimination against persons with disabilities by public accommodations (e.g., organizations, agencies, or businesses offering goods or services to the public). Public accommodations include all the places in a community in which individuals and private organizations conduct public business. Covered under these provisions are hotels, restaurants, stores, theaters, private recreation and health facilities, private schools, private social service settings, transportation terminals, and service establishments. Private clubs and religious organizations are not covered; religious organizations are not covered even when operating a public service such as day care or a school. Title III stipulates that individuals with disabilities may not be denied equal access to the "goods, services, facilities, privileges, advantages or accommodations" that such private entities provide to other customers or clients.

In considering Title III, Congress was well aware of the many impediments to physical access in the public places of the nation. It made very substantial requirements that such places would perform all "readily achievable barrier removal" and construct all new buildings so as to be physically accessible. But, what may be most important about Title III is that private entities must provide access to their goods, services, programs, and activities. In considering the need to go beyond mere physical access, Congress faced troubling indications of the social exclusion of persons with disabilities. Members were presented a 1986 Harris poll that found that people with disabilities were three times less likely than nondisabled community members to eat in restaurants. The poll also revealed that nearly 60% of persons with disabilities interviewed said that they were being held back in meeting their full potential. People with developmental disabilities, especially cognitive limitations, were undoubtedly underrepresented in the Harris poll. But, we know that for most, inclusion in typical community activities with citizens other than paid staff, family, and other persons with developmental disabilities, is a rare experience. The ADA promises important opportunities for much fuller inclusion.

The access promises of the ADA are substantial. They include three major assurances:

- **No denial of participation**: Under Title III, a private entity is prohibited from denying services or benefits on the basis of disability. For example, a movie theater is just as clearly prohibited from denying entry to persons with mental retardation solely on the basis of their condition or presumptions about it ("they won't understand the movie") as it would be in denying entry on the basis of race.
- **Equal participation and benefits**: Title III requires that a private entity permit equal opportunity for persons with disabilities to participate in or benefit from a service or activity as it is offered to the general public. For example, a person with cerebral palsy may not be denied access to an aerobics class simply because the person cannot keep pace or complete an entire workout.
- **Integrated participation**: Title III continues and broadens the federal government's commitment to the full inclusion of persons with disabilities in American society. Title III provides means to insure that individuals with disabilities are integrated to the maximum extent appropriate. Separate programs are appropriate only as necessary to ensure equal opportunity. Individuals with disabilities cannot be excluded from regular public programs or be required to accept special services, except when the person's participation would be a "direct threat" to the health or safety of others and that threat cannot be mitigated by appropriate accommodations, or the individual does not meet legitimate eligibility criteria for participation (e.g., a YMCA basketball league may exclude wheelchair participants if it can demonstrate that the exclusion is necessary for safe participation by all players).

These three provisions, and particularly "integrated participation", promise persons with disabilities and particularly persons with severe disabilities a great deal of legal support in their quest for full inclusion in communities. In many ways, the requirements for integrated participation in Title III of the ADA parallel the kinds of assurances contained in the Individuals with Disabilities Education Act (IDEA); in other ways they exceed them. They parallel them in stipulations like "zero reject," equal opportunities for participation, preference for the most typical environment, participation in choice of programs, and certain required accommodations to an individual's disability. Title III assurances exceed IDEA requirements in that they are even more accommodating of the individual's right to participate in mainstream social roles and activities. For example, people with disabilities are entitled to participate in regular programs even if the private entity thinks they will not benefit (e.g., an art museum cannot exclude people who are blind, a rock concert people who are deaf, a craft class people with mental retardation, or a restaurant people with mental illness solely on presumed abilities or feared predispositions). It is, of course, lawful and sometimes desirable (debate certainly rages on this point), for private entities to offer special programs (e.g., wheelchair

basketball for persons with paraplegia, Special Olympics for persons with mental retardation), but what is clear in Title III, is that the mere creation of special alternatives does not free a private entity from providing access to its regular program if that is the choice of the individual. It is this opportunity for people with disabilities to choose their own roles as typical participants in typical community activities and environments, irrespective of our long history of efforts to establish special activities and environments for them, that is one of the most exciting and challenging aspects of the ADA for persons with developmental disabilities.

The ADA does not stop at assuring physical and programmatic access. It also requires that public entities provide appropriate auxiliary aids and services that would permit an individual with disabilities to participate, provided these would not result in "undue burden" or "fundamental alteration of the goods and services." These are, of course, the uncharted waters of the ADA. What is an "undue burden?" What might be judged as a "fundamental alteration of goods and services?" Clearly case law may take many years to define these. But, these will never be defined unless persons with developmental disabilities, supported by the families, friends, advocates, and service providers, make claim on the full share of community living that the ADA has promised. Discrimination will occur under the ADA, but the law provides remedies. The tragedy of the ADA will be if despite its assurances and remedies people with developmental disabilities become no more active and integrated participants in the communities than they are today. Making the ADA work will take commitment, public education, energy, and a measure of aggressiveness from us all.

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Access Goes Beyond Bricks and Mortar

by Robin A. Jones

The media has portrayed the ADA as a piece of legislation that will have a negative impact upon the business community because of the high cost of compliance. Attention has been focused on persons with disabilities getting in and out of doorways, negotiating stairs, and using restrooms. Access under the ADA goes beyond bricks and mortar, beyond these images of physical access.

The ADA calls for the business community to evaluate how they deliver their services and requires that they make whatever adjustments are necessary to insure that all customers have an equal opportunity to benefit from the goods and services offered. The authors of the ADA recognized that all the barriers faced by people with disabilities would not be eliminated even if every building were physically accessible. Access is a complex issue that requires examination of both the physical and operational aspects of businesses.

The ADA calls for every business owner to examine the goods and services offered and to develop a plan for making them accessible to individuals with disabilities. Access may require a change in existing policies to accommodate an individual with a disability. Access may include a disability awareness program that educates and trains staff in how to respond appropriately to the needs of customers with different types of disabilities in varying circumstances. Access may include notifying customers that staff are available to assist them if needed. Access may require the development of alternative methods for delivering services if the facility is not accessible. In the majority of situations there is a practical solution available to meeting the needs of customers with disabilities.

Each of the scenarios described above is a potential situation faced by businesses under the ADA. There is no single solution because no two businesses are operated in exactly the same manner. In addition, many business owners are either unaware of the ADA or are unclear regarding its application to them. The success of the ADA depends on the ongoing interaction between members of the business community and people with disabilities.

The ADA requires entities affected by it to assume the responsibility for voluntary compliance. Individuals with disabilities, family members, and friends can assist the businesses in their communities with compliance efforts. They can patronize businesses that have made an effort to comply with the law, inform non-complying businesses that they are in violation and may face penalties, offer suggestions for improving accessibility, and call attention to policies and practices that are discriminatory. As businesses, individuals with disabilities, and other community members take a proactive approach to making the ADA work, we can realize access for everyone.

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Designing for All: Beyond the ADA to Universal Design

by Harold Dean Kiewel

Many architects see in the Americans with Disabilities Act (ADA) a new hope for the future. They expect the ADA to resolve the confusion between separate federal, state, and local building codes on accessibility. Some of us, however, have an even greater expectation. We see in the ADA an opportunity to redefine the "average" American.

The ADA's Accessibility Guidelines have taken some steps in this direction by setting design standards for accommodating people with vision and hearing impairments. Additional studies are also progressing on standards for accessibility for children with disabilities and people with cognitive impairments. The larger issue will be exposed when these efforts are revealed to be the window dressing for the world of diversity which lies beyond.

■ Redefining the Typical Consumer

Centuries ago, Western architecture was founded on the assumption that an idealized, able-bodied, non-elderly adult male would be the primary user of all built environments. If this was ever a viable model, it is certainly out-dated now. Through the ravages of war and polio epidemics, and through Acts of Congress, Presidential Orders, and the moral suasion of its collective conscience, America has redefined its enfranchised public.

In 1980, approximately 9.8% of population was reported to be adults with a chronic disability. Another

International symbol of accessibility

10.4% were non-institutionalized elderly. Children between the ages of 9 and 16, who are often semi-independent consumers, accounted for approximately 9.2%. Adult men and women were each about 30% of the population, but by definition only the "center 1/3" are "average". Thus typical men and typical women each represent only 10% of the population. This means that the average, able-bodied, non-elderly, adult male is no more typical of the consumer population, than a similarly described female, an adult with a disability, an elderly person, or a teenage consumer. The reality is that there is no such thing as a typical consumer, and that design efforts must recognize the full diversity of our population.

For the first few decades of the accessibility movement, the building code approach was applied to these new design issues. This approach identifies a "worst case" design problem, and establishes design standards to cover that extreme condition. Worst case in a fire emergency is the maximum number of people a building can hold, so the exits of a building are designed to evacuate that number of people; similarly, heating and air conditioning systems are sized to handle the coldest winter night and the hottest summer day. Worst case in the early years of the accessibility movement meant that a building could be used by an adult with a physical disability. Today the movement is forever branded by the International Symbol of Accessibility as primarily benefiting people who use wheelchairs. However, our collective conscience is no longer satisfied with this definition. People with sensory and cognitive impairments as well as people with physical impairments must also be included.

■ Focusing on the Environment

Advocates have always claimed that accessibility yields benefits not only for people with disabilities, but also for the temporarily able-bodied as well. New refinements in our understanding of the handicapping experience have made this very clear. The handicapping experience has become defined as unsuccessful performance. By this definition, a person is having a handicapping experience when the task at hand cannot be successfully completed in the environment provided. In any unsuccessful event there are three essential elements: a person, a place and a purpose. None of these can be held individually accountable for the outcome; it is their confluence and interaction that creates the negative experience. A parent pushing a baby stroller at the bottom of an "up" escalator is having a handicapping experience just like a person using a wheelchair confronting a sidewalk curb, or a blind person facing the directory of an office tower.

Architects have long understood that buildings must not only hold, but actually support, the activities for which they are designed. This definition of the handicapping experience

moves the concept of environmental support to a higher plane of significance. It implies that a properly designed environment will aid people in the same manner as shoes, wheelchairs, eye-glasses, white canes, hearing aids or any other prosthetic device. The challenge is to design a user friendly environment that is functional regardless of the size, age, strength, agility, perceptual capacity, or cognitive ability of the user. This challenge is the foundation of Universal Design. It turns the accessibility movement away from a patronizing "worst case" design process towards a holistic, people oriented approach.

■ Putting the Ideas to Work

The fundamental difference between the accessibility and Universal Design approaches can be illustrated by looking at signage. Signage has been viewed as a purely visual and graphic problem. Sign designers have traditionally presumed that a "normal" level of visual acuity and cognitive ability could be expected of all consumers.

The accessibility approach identified the "worst case" user of signage as people who are blind. People with severe vision loss need the information content of a sign to be available in another sensory mode, such as touch, or sound.

A tactile sign

The ADA-Accessibility Guidelines have standards on the tactile (legible by sense of touch) requirements for signage. The tactile requirements define character features that allow a sign to be easily read both visually and tactually.

However, many people, regardless of their visual acuity, are not able to reliably interpret purely written information. Words which begin with similarly shaped letters (M and W) may be interchanged. References that interchange the relative lengths of words such as using "Gentlemen and Ladies" instead of "Men and Women" can create interpretation problems. Also, signage that uses unfamiliar references may be unintelligible. For example, in a restaurant which has a hunting theme to its decor and menu the toilets may be sex-segregated by signs reading, "Pointers and Setters" accompanied by pictures of hunting dogs. The signs could be clever and attractive, but to the uninitiated they would be confusing and potentially very embarrassing.

Universal Design does not stigmatize people by identifying "worst cases to define for"; it redefines the term "normal". Normal visual abilities are expanded to include

A Universal sign combining pictograms, and English and Braille words.

persons with vision loss and blindness. Normal cognitive abilities are broadened to include people with learning disabilities and developmental delays, and also people who do not read English for cultural or educational reasons. A Universal Design solution includes not only written and tactile elements, but also pictograms, international symbols, or some other identifiable graphic information.

Universal Design is the consummate hope for the accessibility movement. Its superiority stems from its acknowledgment that people with disabilities are equal partners in our social order, and not a special interest group. It is the "normalization" of disability and the elimination of the handicapping experience that is our paramount goal. Full implementation of Universal Design will mean that all enfranchised people can perform successfully in the exercise of their lives, liberties, and pursuits of happiness.

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Claiming the Promise: Parents and the ADA

by Patricia McGill Smith and Anne M. Lauritzen

We who are parents of children with developmental disabilities share two primary goals for our daughters and sons: their acceptance by other people, and their inclusion in all aspects of community life. While it would seem that these two goals have been made more attainable by the legislation of recent years, in reality they cannot be reached without the continued persistence and hard work of families of persons with developmental disabilities.

The passage of the Education of All Handicapped Children Act in 1975 brought the first promise of inclusion of our children into community school systems. However, the promise of inclusion in typical school settings developed more slowly and required more parent education, vigilance, and political advocacy than many first anticipated. Modest improvements in the situation were promised by the 1990 reauthorization of the Act, retitled the Individuals with Disabilities Education Act (IDEA). One important improvement that did emerge was the Individual Transition Plan for students 14 years and older, which focuses on community-referenced learning to prepare students for adult roles in their communities. This aspect of IDEA expresses an assumption that appropriate education leads to skills that enable students to take full advantage of opportunities to participate in, contribute to, and benefit from membership in society. Unfortunately, those opportunities have been far too few for persons with developmental disabilities.

The Americans with Disabilities Act (ADA) is intended to further improve the situation by applying a "new equal access doctrine" to all aspects of the lives of individuals with disabilities, not just the school years. It assures persons with disabilities access to the same resources and opportunities as other members of the community so that they, too, can enjoy the fullest possible levels of social participation, independent living, and economic self sufficiency.

Together, the IDEA and the ADA are a potentially powerful combination: the IDEA is a commitment to the fullest development of the skills valued in society, and the ADA is a commitment to the fullest opportunity, and support to fulfill the typical roles in society (worker, customer, neighbor, bus rider, and so on). The ADA promises that the person who acquires skills from (special) education will be able to put those skills to use during and after the school years regardless of any disability. Parents must recognize that helping society keep this promise will require our political involvement, community monitoring, and program advising.

Political involvement starts with parent education. Parents must educate themselves and be prepared to educate others about the ADA. We need to know how the ADA works, how we get it to produce opportunities for our children, and how we can use its teeth when necessary. We must seek out other parents and together request informational training on the ADA and its provisions from state developmental disabilities planning councils, protection and advocacy services, independent living centers, state councils on disabilities, parent centers, and other disability agencies and organizations. We also need to organize to assure that political pressure can be applied when needed. For parents to assume that the opportunities promised in the law will be realized without our ongoing vigilance has no basis in the nearly half-century history of the parent movement.

Another role parents must assume is that of knowledgeable and persistent prodders for compliance. We have to ask simple questions about access and equality for persons with disabilities in daily living situations. Where answers are unsatisfactory, we must confront employers, managers of public accommodations, and others. We must comment on the situation, provide guidelines for compliance, or, if necessary, file a formal complaint. In most cases if we explain the law, and communicate that we are expecting compliance because of our love for and commitment to our children and basic justice, then people will work with us.

Throughout our children's schooling, and particularly in developing transition plans, we must make sure that our children are developing the skills that are needed in the job and community living opportunities that the ADA promises to make more readily available. The ADA does not promise a job to all persons with disabilities; it promises job opportunities to all *qualified* persons with disabilities. Creating opportunities means creating skills and/or accommodating for limitations. Education and transition planning should be attending to these skills long before our children leave school to assure that they have the greatest possible chance to benefit from the new options they are promised. We and our children should know about the adaptations and supports needed by our children and where to get needed assistance.

Finally, we must, to the greatest extent we can, teach our children their rights and the skills to assert those rights. And above all else we must understand that we are never alone in our struggle to achieve full citizenship for all persons with disabilities. The National Parent Network on Disabilities is committed to bringing parents together in this struggle through participation in the National Peer and Family Training Network Project on ADA.

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Resources: Organizations and Publications

■ Organizations

- **Great Lakes Disability and Business Technical Assistance Center**. 1640 W. Roosevelt Road, Chicago, IL 60608. (800) 949-4232. Provides technical assistance and information about the ADA and distributes materials developed by the federal government on the ADA.
- **Equal Employment Opportunity Commission.** 1801 L Street NW, Washington, DC 20507. (800) 669-3362 (for publications); (800) 669-4000 (for answers to questions); (800) 800-3302 (TDD). Provides technical assistance and information regarding Title I (employment).
- **President's Committee on Employment of People with Disabilities Information Line**. 1331 F Street NW, Washington, DC 20004. (800) 232-9675; (202) 376-6205 (TDD). Provides information regarding employment of people with disabilities.
- **Architectural and Transportation Barriers Compliance Board (ATBCB).** 1111 18th Street NW, Suite 501, Washington, DC 20036. (800) 872-2253 (Voice/ TDD). Provides technical assistance regarding the Americans with Disabilities Act Accessibility Guidelines.
- **Minnesota STAR Program**, 300 Centennial Building 658 Cedar Street, St. Paul, MN 55155. (612) 296-2771 (Voice), (612) 296-9962 (TDD), (612) 297-7200 (Fax). Provides information, referral, and advocacy related to assistive technology services and devices.
- **ACCESS ADA.** The Arc, National Headquarters, P. O. Box 1047, Arlington, TX 76004. (800) 433-5255 or (817) 261-6003; (800)-855-1155 (TDD; ask operator to call collect 817-277-0553). Provides information on the ADA and its impact on people with cognitive disabilities.
- **Minnesota State Council on Disability**. 145 Metro Square Bldg., 7th Pl. and Jackson St., St. Paul, MN 55101. (800) 652-9747; (612) 296-1743 (Voice/TDD). Provides information, referral, advocacy, and training related to the requirements and implementation of the ADA and the Minnesota Human Rights Act.
- **PACER Center** (Parent Advocacy Coalition for Educational Rights), 4826 Chicago Ave. S., Minneapolis, MN 55417. (612) 827-2966 (Voice/TDD). Provides workshops, referrals, and information on the ADA.
- **Peer and Family Training Network Project on ADA**. c/o Parent Information Center, P.O. Box 1422, Concord, NH 03302. (603) 224-7005 (Voice/TDD). Provides training and technical assistance to persons with disabilities, families, and others through a peer training model.

■ Publications

- **Americans with Disabilities Act Handbook**. 1991. By the Equal Employment Opportunity Commission and the U.S. Department of Justice. Available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.
- **Technical Assistance Manual on the Employment Provision of the Americans with Disabilities Act**. 1992. By the Equal Employment Opportunity Commission. Available from U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.
- **The Americans with Disabilities Act: From Policy to Practice**. 1991. By Jane West. Published by Milbank Memorial Fund, New York.
- **The Americans with Disabilities Act: A Guide for People with Disabilities, Their Families, and Advocates.** In press. By the Peer and Family Training Network Project on the ADA. Available through PACER Center, 4826 Chicago Ave. S., Minneapolis, MN 55417. (612) 827-2966.

Checklists/Pamphlets

- **Checklist for Readily Achievable Barrier Removal.** Available from the regional Disability and Business Technical Assistance Centers, (800) 949-4232.
- **The Americans with Disabilities Act: Your Responsibilities as an Employer,** and **The Americans with Disabilities Act: Your Rights as an Individual with a Disability**. Available from the Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507. (800) 669-3392.
- **Americans with Disabilities Act: Questions and Answers.** Available from the U.S. Department of Justice, P.O. Box 66118, Washington, DC 20035-6118. (202) 514-0301.
- **Doing Business in Compliance with the ADA**. Available from the Foundation on Employment and Disability, (310) 214-3430.
- **Pamphlets on Title III (Public Accommodations)** requirements in outpatient health care, automotive centers, grocery stores, recreation/fitness centers, retail stores, and restaurants. Available from the Council of Better Business Bureaus Foundation, (703) 247-3655 (Voice), (703)247-3656 (TDD).

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(particularly leaders in the field of mental retardation) were wondering aloud if the ADA "really" applied to their constituencies. We were somewhat surprised at this reaction from individuals whose associations had been so active in framing the Act and securing its passage. We sought to assure them that all Americans with disabilities were fully covered under the Act, including people with mental retardation and other severe disabilities. Indeed, in comparing the definition of "developmental disability" in this Act with the definition of "disability" in the ADA, we find it inconceivable that anyone who qualified as "developmentally disabled" under the DD Act (wherein it is required that a person have "substantial functional limitations in three or more . . . areas of major life activity") would be considered "ineligible" for coverage under the ADA (wherein it is required that a person has an "impairment that substantially limits one or more of the major life activities"). We must all understand from the outset that *people who have developmental disabilities are, in fact, covered under the Americans with Disabilities Act and have all the rights and protections guaranteed under the Act.* We must also understand that the challenge of making the ADA have a significant impact on the lives of persons with developmental disabilities does mean many more years of hard work, public education, and forceful advocacy for us all.

For example, the ADA promises that, at present, employers with more than 25 employees cannot discriminate against qualified people with developmental disabilities in employment. This covers areas such as recruitment, hiring, job assignments, pay, layoff provisions, firing, training, promotions, benefits, and leave policy. But, to assure full benefit of this promise much must be done in expanding public attitudes about the meaning of "qualified" and in teaching and supporting people to reach their fullest ability to demonstrate their qualifications.

The ADA also promises that people with developmental disabilities will have access to nearly every conceivable public facility such as restaurants, banks, hotels, shopping centers, and offices. However, many individuals need support and opportunities to take advantage of this provision. Approaches to service delivery that institutionalize and isolate persons with developmental disabilities reflect denial by developmental disabilities specialists of access to the very opportunities society as a whole is ready to provide.

The ADA promises that people with developmental disabilities will have significantly increased access to transportation services. But, such promises can be meaningful only if the developmental disabilities service system is willing to accept the benefits of public access over the convenience of specialized vans and buses.

Finally, the ADA promises that people with developmental disabilities that involve hearing losses or speech and language impairments will have access to mainstream telecommunications networks. But, in order for persons with developmental disabilities to benefit from such access, service providers must commit to the fullest possible development of communication abilities.

What will all of this - the letter and spirit of the ADA - mean for people with developmental disabilities? First, we can foresee a day in the not-too-distant future when it will be virtually unthinkable for children with developmental disabilities to be educated anywhere but in typical neighborhood schools. Even "special transportation" will fade into obscurity as young people with disabilities travel to and attend school with their siblings and typical age peers.

Secondly, we see a day in which the process of moving from school to work or further education will become a natural and much smoother transition. Students with disabilities will do what their typical peers hope to do: go on for further education or get a job. "Waiting lists" for such opportunities will be unthinkable.

Third, we see a future where people with disabilities live in typical housing, not in institutions or "group homes", but in apartments and typical houses - some as renters and some as owners.

Lastly, we see a future where people with developmental disabilities will be much more involved in the social and financial lives of their communities. They will be viewed as "givers" as well as "receivers", as contributors of their time and talents to their communities. They will help to make their communities better places for everyone to live, places where it is "OK" to be different.

For all of this to happen, people with developmental disabilities and their advocates must see themselves as active players in defining what the ADA will eventually mean to our society. It is critical that people with developmental disabilities, their advocates, and professionals establish and demonstrate new and creative meanings for terms such as "qualified," "reasonable accommodation," and "readily achievable." While some have criticized the ADA as "vague" in its definitions of terms such as these, we see this as an opportunity for people with developmental disabilities and their advocates to test the limits of creativity in developing new avenues of opportunity for the full participation of people with developmental disabilities in society.

Being creative does not necessarily mean being expensive for businesses and communities. Many of the "technologies" that can help people with severe disabilities function and flourish in the workplace have already been "invented": job coaches, personal care attendants, augmentative communication aids, and the like. Many of these supports are or can be funded by governmentally-financed programs. While we hope that in the future more employers will provide assistance to people with developmental disabilities directly (indeed, some already are), it is the case that many of the costs associated with "reasonable accommodation" are already paid for, or could be paid for, under other programs. The challenge to advocates is to both

identify and further develop these technologies and supports and to ensure that they are available to people with developmental disabilities, their (potential) employers, and communities. The result will be that when discussions arise regarding who is "qualified" or what constitutes "reasonable accommodation," people with developmental disabilities, their families, and other advocates can make it easy for others to say, "Yes."

Staff members of the Administration on Developmental Disabilities (ADD) are continually seeking ways to increase the independence, productivity, and community inclusion of people with developmental disabilities. They see in the ADA an opportunity to create vastly improved futures for the people they serve. ADD has invested resources in making the promise of the ADA a reality for people with developmental disabilities across America through innovative projects funded by the Developmental Disabilities Councils in every state, through the pioneering work of the University Affiliated Programs in discovering better forms of accommodation, and through the efforts of the Protection and Advocacy Systems to promote and safeguard the rights of persons with developmental disabilities.

It is our belief that this vital work must continue. We trust that those who have fought for so long to see people with developmental disabilities treated with respect in the light of equality will persevere along with us. Together, we will continue to discover creative ways to ensure that every man, woman, and child with a developmental disability in American will be able, in the President's words, "to pass through once-closed doors into a bright new era of equality, independence and freedom."

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however, include some positive claim rights for members of one or another of the suspect classes, particularly if it appears that the group currently suffers from some lingering effects of prior discrimination, such as the experience of an inferior education. For example, the right to affirmative action is a positive claim right. To a greater extent than any prior civil rights law, however, the ADA creates "positive claim rights" to compensatory provisions, that is provisions that make up, to some extent, for whatever specific competitive disadvantage may come with a particular disability.

It is clear that, unlike skin color, disability reflects intrinsic impairment with functional consequences that require real accommodation beyond a change in public attitude. Of necessity the ADA also deals with the liberties and negative claim rights of others, notably employers, providers of services, state and local governments, and proprietors of places of public accommodation. In a quite material way P.L. 101-336 displaces the previous balance between people with disabilities as rights holders and those other people who are expected to be duty bearers. Like Section 504 before it, the new law invokes real issues of "competing equities" in a variety of contexts. It has changed the equation of mutual responsibility. At what point will the new duty bearers begin to reclaim their own liberties? At what point will universal design and the assimilation and inclusion to which so many people with disabilities aspire meld these extraordinary claim rights into mainstream law and the common ethic? Will we know when we have arrived?

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standards, the local transit authority must develop a paratransit plan to show how it will bring its system into compliance by no later than January 26, 1997. Persons with disabilities and disability advocates are required to be involved in the development of the plan from its early stages.

These transportation requirements will be enormously beneficial in many communities throughout our country where there have been few, if any, public transit options for those who have a disability. However, there are possible problems in communities that already have an extensive paratransit system. These communities often already exceed the ADA's requirements in certain respects such as eligibility standards, fares charged for the service, or area and hours of service. There is a concern that, given current economic problems, some of them may choose to view the ADA as establishing the standard for service, thereby giving them an excuse for reducing their current level of service, and in effect interpreting the ADA requirements as a set of norms rather than minimum service expectations. Indeed, since full compliance with the regulations is not required until January 26, 1997, it is even possible for a community to temporarily reduce its paratransit service by not fully complying with the regulations for a period of time.

The ADA offers real hope that persons with disabilities throughout the country will finally have more opportunity to move about in our society. This will only happen, however, if they work closely with local officials to assure that newly purchased buses are accessible, that their community's paratransit plan complies with the ADA requirements and meets local needs, and that the ADA does not become an excuse for reducing existing service.

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The mission of the Center and Institute is to apply their resources to improve the quality and community orientation of professional services and social supports available to individuals with disabilities and their families. Efforts are directed at facilitating the independence of citizens with disabilities and their social integration into the mainstream of community life.

Inquiries about the Center, Institute or IMPACT can be directed to: Institute on Community Integration, 6 Pattee Hall, University of Minnesota, 150 Pillsbury Drive SE, Minneapolis, MN 55455 • (612) 624-4848.

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